UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M.R. MIKKILINENI,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: 02-1205 (RMU)
v.	:	
	:	Document Nos.: 27, 28, 33, 34, 48, 50
COMMONWEALTH OF PENNSYLVANIA *et al.*,	:	
	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

DENYING THE FEDERAL DEFENDANTS' MOTION TO STRIKE; GRANTING THE DEFENDANTS' RENEWED MOTIONS TO DISMISS

I. INTRODUCTION

This action arises from previously-litigated contract disputes and what the *pro se* plaintiff characterizes as the defendants' "fraud upon the Court(s)" during this earlier litigation. Due to the plaintiff's dissatisfaction with the results of the previous cases, filed in Pennsylvania state and federal courts, he has re-filed similar claims in this district and added claims against the United States. Specifically, the plaintiff alleges civil rights, contract, and tort violations, and seeks monetary damages, a declaratory judgment, and a writ of mandamus compelling the Attorney General to conduct an investigation of the alleged violations.

This matter is before the court on the federal defendants' motion to strike the plaintiff's first amended complaint, the federal defendants' renewed motion to dismiss,

and the private and state defendants' renewed motions to dismiss.[1] Because the federal defendants' arguments in their motion to strike are not well-substantiated by law from this circuit, the court denies this motion. In addition, because the plaintiff's claims against the federal defendants lack subject-matter jurisdiction and fail to state a claim, the court grants the federal defendants' renewed motion to dismiss. Because venue for the plaintiff's claims against the private and state defendants is improper in this district, the court grants the private and state defendants' renewed motions to dismiss. Finally, because the statute of limitations bars the plaintiff's claims against defendant Forest Hills, the court grants its renewed motion to dismiss.

II. BACKGROUND

A. Facts of the Case

In his first amended complaint, the plaintiff outlines contract disputes originating from (1) a 1989 contract between his corporation and defendant Pennsylvania to build a "box-culvert" in Clearfield, Pennsylvania; (2) a 1989 contract between his corporation and defendant Forest Hills to build storm sewers in Pennsylvania; (3) a 1989 contract with defendant Glenn involving a waterline project; and (4) a 1986 contract with

[1] In his complaint, the plaintiff names two federal defendants: the United States, which he describes as including the federal judges who presided over his federal lawsuits and appeals and the judges' clerks; and Leonidas R. Mecham, the director of the Administrative Office of the U.S. Courts who denied the plaintiff's tort claims against the federal judges. First Am. Compl. ("Compl.") at 4-6. The plaintiff describes three state defendants: the Commonwealth of Pennsylvania ("Pennsylvania"), consisting of the state judges who presided over his state litigation, the Pennsylvania Department of Transportation, and the Pennsylvania Attorney General; the Borough of Forest Hills ("Forest Hills"), a municipality in Pennsylvania; and Pittsburgh Water and Sewer Authority ("Pittsburgh"), a government authority that manages Pittsburgh's water and sewer system. *Id.* Finally, the private defendant is Glenn Engineering and Associates, which the plaintiff describes as encompassing the engineering firm and its lawyer "attorney Shields" (collectively, "Glenn"). *Id.*

defendant Pittsburgh to build a pump station. Compl. at 7, 11-12, 16-17, 20-22. The plaintiff makes vague allegations that all or some of the defendants committed "fraud upon the Court(s)" during the plaintiff's prior litigation involving these projects in Pennsylvania state and federal courts. *Id.* at 10-11, 15, 20, 23.

The plaintiff charges the private and state defendants with civil rights, contract, and tort violations. *Id.* at 25-26. In addition, the plaintiff charges that defendants Pennsylvania and the United States, through their respective judges, violated the Constitution when the judges ruled against the plaintiff. *Id.* at 9-10, 14-15, 19-20, 23-24. He also pleads, without specificity, that these judges conspired during the court proceedings to commit fraud and thereby deprive him of his right to a jury trial. *Id*. at 27. According to the plaintiff, defendant Mecham, acting through the federal judges, deprived the plaintiff of his constitutional rights by creating a policy prohibiting corporations from appearing in court *pro se* and conspiring with the federal judges to use this policy to block the plaintiff's access to federal courts. *Id*. at 6-7, 27-28. Further, the plaintiff charges that the federal judges violated the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346, by ruling against him. *Id.* at 27-30.

The plaintiff asks for a writ of mandamus compelling the Attorney General to investigate the defendants' alleged conspiracy against the plaintiff. *Id.* at 27. Furthermore, the plaintiff seeks a declaratory judgment and monetary damages. *Id*. at 29.

B. Procedural History

The plaintiff filed his original complaint on June 18, 2002.[2] On September 23, 2002, the United States filed a motion to dismiss the plaintiff's complaint. On October 10, 2002, after all of the defendants had filed motions to dismiss, the plaintiff filed a first amended complaint that added defendant Mecham. In response, the state and private defendants filed renewed motions to dismiss. The federal defendants, however, filed a motion to strike the first amended complaint. On June 6, 2003, the court directed the federal defendants to file a notice or motion stating whether they sought to renew their original motion to dismiss and apply it to the first amended complaint. In response, the federal defendants filed a renewed motion to dismiss that incorporates by reference the original motion to dismiss and adds grounds for the dismissal of the new claims against defendant Mecham. Finally, the plaintiff filed a motion requesting a hearing or telephone depositions on the issues of specific jurisdiction and venue.

III. ANALYSIS

A. The Court Denies the Federal Defendants' Motion to Strike

The federal defendants move to strike the plaintiff's first amended complaint, arguing that Federal Rule of Civil Procedure 21 bars the plaintiff from adding a party in the first amended complaint without leave of court. Fed. Defs.' Mot. to Strike at 3-4. The D.C. Circuit, however, permits plaintiffs to amend complaints pursuant to Rule 15 "once as a matter of course" so long as the opposing party has not yet served a responsive

[2] The plaintiff has filed eight different cases in the U.S. District Court for the District of Columbia: civil actions 01-0314, 01-2287, 02-0702, 02-0716, 02-0970, 02-1118, 02-1205, 02-2222.

pleading and the court has not ruled on a motion to dismiss. FED. R. CIV. P. 15(a); *James V. Hurson Assocs., Inc., v. Glickman*, 229 F.3d 277, 282-83 (D.C. Cir. 2000); *Gov't of Guam v. Am. President Lines*, 28 F.3d 142, 150 (D.C. Cir. 1994). A motion to dismiss is generally not considered to be a "responsive pleading" under Rule 15(a). *Id*. In addition, "[p]ro se litigants are allowed more latitude than litigants represented by counsel to correct defects in service of process and pleadings." *Moore v. Agency for Int'l Dev.*, 994 F.2d 874, 876; *James V. Hurson Assocs.*, 229 F.3d at 282-83.

In moving to strike the first amended complaint, the federal defendants do not cite to any cases demonstrating that Rule 21 trumps the mandate of Rule 15(a) and this circuit that a plaintiff can amend "once as a matter of course." Therefore, because this circuit favors permitting *pro se* plaintiffs to amend their complaints, and the amendment was of right, the court denies the federal defendants' motion to strike the first amended complaint. *Moore*, 994 F.2d at 876; *Gov't of Guam*, 28 F.3d at 150.

B. The Court Grants the Federal Defendants' Renewed Motion to Dismiss

This court dismisses all of the plaintiff's claims against the federal defendants because the plaintiff's claims do not survive the federal defendants' renewed motion to dismiss pursuant to Rule 12(b)(1) and (6). Evaluating the plaintiff's claims against defendant Mecham, the court determines that these claims are so "patently insubstantial" that the court lacks jurisdiction over them. Next, the court concludes that the plaintiff's claims against the defendant United States fail to state cognizable claims because the judges are protected by judicial immunity. Finally, the plaintiff's requests for a writ of mandamus and declaratory relief fail to state cognizable claims because these forms of relief are not legally permissible.

1. Legal Standard for a Motion to Dismiss

a. Rule 12(b)(1)

Federal courts are courts of limited jurisdiction and the law presumes that "a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938). On a motion to dismiss pursuant to Rule 12(b)(1), the plaintiff bears the burden of establishing that the court has subject-matter jurisdiction. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999); *Rasul v. Bush*, 215 F. Supp. 2d 55, 61 (D.D.C. 2002) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182-83 (1936)). The court may dismiss a complaint for lack of subject-matter jurisdiction only if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Empagran S.A. v. F. Hoffman-Laroche, Ltd.*, 315 F.3d 338, 343 (D.C. Cir. 2003) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

In this circuit, courts must assume the truth of the allegations made and construe them in a light favorable to the plaintiff. *Id*. (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)). Because subject-matter jurisdiction focuses on the court's power to hear the plaintiff's claim, however, a court resolving a Rule 12(b)(1) motion must give the complaint's factual allegations closer scrutiny than required for a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim. *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001). Moreover, the court is not limited to the allegations contained in the complaint. *Hohri v. United States*, 782 F.2d 227, 241 (D.C. Cir. 1986), *vacated on other grounds*, 482 U.S. 64 (1987). Instead, to determine whether

it has jurisdiction over the case, the court may consider materials outside the pleadings. *Herbert v. Nat'l Acad. of Sciences*, 974 F.2d 192, 197 (D.C. Cir. 1992).

b. Rule 12(b)(6)

For a complaint to survive a Rule 12(b)(6) motion to dismiss, it need only provide a short and plain statement of the claim and the grounds on which it rests. FED. R. CIV. P. 8(a)(2); *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A motion to dismiss under Rule 12(b)(6) tests not whether the plaintiff will prevail on the merits, but instead whether the plaintiff has properly stated a claim. FED. R. CIV. P. 12(b)(6); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The plaintiff need not plead the elements of a prima-facie case in the complaint. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511-14 (2002) (holding that a plaintiff in an employment-discrimination case need not establish her prima-facie case in the complaint); *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1114 (D.C. Cir. 2000). Thus, the court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Atchinson v. District of Columbia*, 73 F.3d 418, 422 (D.C. Cir. 1996). In reviewing a *pro se* plaintiff's submissions, the court must apply "less stringent standards" than it would in considering "formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

In deciding such a motion, the court must accept all of the complaint's well-pled factual allegations as true and draw all reasonable inferences in the nonmovant's favor. *Scheuer*, 416 U.S. at 236. The court need not accept as true legal conclusions cast as factual allegations. *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994).

2. The Court Dismisses the Claims Against Defendant Mecham

The federal defendants argue that because the claims against defendant Mecham are patently insubstantial, the court should dismiss them for lack of subject-matter jurisdiction. Fed. Defs.' Renewed Mot. to Dismiss at 4-5. The court can dismiss a case for want of subject-matter jurisdiction "where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial." *Bell v. Hood*, 327 U.S. 678, 682 (1946); *see also Oneida Indian Nation of N.Y. State v. County of Oneida*, 414 U.S. 661, 666 (1974). The D.C. Circuit has recognized that courts lack jurisdiction over claims that are "patently insubstantial," such as claims alleging bizarre conspiracy theories. *Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir. 1994). Whereas Rule 12(b)(6) dismissals "cull *legally* deficient complaints[,]" the Rule 12(b)(1) substantiality doctrine is "reserved for complaints resting on truly fanciful *factual* allegations." *Id.* at 331 n.5.

The plaintiff claims that defendant Mecham created a policy prohibiting *pro se* representation of corporations, and carried out that policy through, *inter alia*, "Chief Justice Rehnquist of the Supreme Court," "Chief Judge Becker of the Third Circuit," and "Chief Judge Ziegler of the US Court in Pittsburgh." Compl. at 5-6, 27-28; Pl.'s 11/01/02 Opp'n at 7-9. The plaintiff further alleges that by conspiring with the judges to keep the plaintiff out of court, defendant Mecham deprived him of his constitutional rights. Compl. at 27-28.

The plaintiff's conspiracy theory is "patently insubstantial." *Best*, 39 F.3d at 330. Defendant Mecham is not responsible for the above-listed judges' rulings that corporations may not appear in court *pro se*, nor is he responsible for the creation of such a policy. Rather, the Supreme Court created this rule and the Third Circuit has followed

this rule since long before the plaintiff's litigation began. *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201-02 (1993) (stating "[i]t has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel") (citing *Osborn v. President of Bank of U.S.*, 9 Wheat. 738, 829 (1824)); *Simbraw, Inc. v. United States*, 367 F.2d 373, 373-74 (3d Cir. 1966). Thus, the claims against defendant Mecham are so "patently insubstantial" as to deprive the court of jurisdiction over the claims. *Best*, 39 F.3d at 330; *Empagran*, 315 F.3d at 343.

3. The Court Dismisses the Claims Against Defendant United States

The federal defendants argue that the plaintiff's claims against the federal judges fail to state a claim because judicial immunity protects the judges from suit. Fed. Defs.' Renewed Mot. to Dismiss at 6. The principle of judicial immunity is well-established. *Tinsley v. Widener*, 150 F. Supp. 2d 7, 11 (D.D.C. 2001) (citing *Stump v. Sparkman*, 435 U.S. 349 (1978); *Bradley v. Fisher*, 80 U.S. 335 (1871)). Absolute immunity is necessary for judges and their clerks to carry out their judicial functions because judges must "act upon [their] convictions, without apprehension of personal consequences to [themselves]." *Bradley*, 80 U.S. at 347; *Oliva v. Heller*, 839 F.2d 37, 40 (2d Cir. 1988). Appealing to a higher court for relief is the only judicial procedure available to a litigant who seeks to challenge the legality of decisions made by a judge in her judicial capacity. *Dacey v. Clapp*, 1993 U.S. Dist. LEXIS 15815, at *5 (D.D.C. Oct. 29, 1993). The acts of assigning a case, ruling on pretrial matters, and rendering a decision all fall within a judge's judicial capacity. *John v. Barron*, 897 F.2d 1387, 1391 (7th Cir. 1990), *cert. denied*, 498 U.S. 821 (1990). Judicial immunity, however, does not extend to judges' administrative, legislative, or executive functions. *Forrester v. White*, 484 U.S. 219, 227 (1988).

The plaintiff asserts that defendant United States, through the federal judges and their clerks, acted unconstitutionally and in violation of the FTCA by dismissing the plaintiff's previous civil actions and appeals. Compl. at 27-28. Because the alleged tortious acts are judicial acts, the judicial immunity defense applies to the federal judges and the clerks. 28 U.S.C § 2674; *John*, 897 F.2d at 1391. In addition, defendant United States is entitled to assert judicial immunity when sued for the actions of the judiciary because this defense is available to the judicial officers whose acts are the basis for these claims. 28 U.S.C. § 2674. Accordingly, this court dismisses the plaintiff's claims against the judges and their law clerks for failure to state a viable claim. *Hishon*, 467 U.S. at 73.

4. The Court Dismisses the Petition for a Writ of Mandamus

The federal defendants move the court to dismiss the plaintiff's petition for a writ of mandamus because it fails to state a legally cognizable claim. Fed. Defs.' Renewed Mot. to Dismiss at 5. A writ of mandamus is "an extraordinary [remedy], and it is to be utilized only under exceptional circumstances." *Haneke v. Sec'y of Health, Educ. & Welfare*, 535 F.2d 1291, 1296 (D.C. Cir. 1976). "[M]andamus generally will not issue unless there is [(1)] a clear right in the plaintiff to the relief sought, [(2)] a plainly defined and nondiscretionary duty on the part of the defendant to honor that right, and [(3)] no other adequate remedy." *Ganem v. Heckler*, 746 F.2d 844, 852 (D.C. Cir. 1984). The plaintiff has the burden to satisfy this three-part test. *Id.*; *see also Whittle v. Moschella*, 756 F. Supp. 589, 596-97 (D.D.C. 1991). Failure to meet any one of these three requirements is fatal to the plaintiff's request. *Id.*

The plaintiff asserts that the court should compel the Attorney General to conduct an investigation into the civil conspiracy, bad faith acts, and "fraud upon the Court(s)" of all of the defendants. Compl. at 27. In his complaint, the plaintiff alleges that the

Attorney General has a duty to investigate these claims. *Id.* The court, however, need not accept as true the plaintiff's legal conclusion. *Kowal*, 16 F.3d at 1276. The plaintiff's baseless assertions that the Attorney General has a duty to investigate his claims fails to satisfy his burden of demonstrating a "nondiscretionary duty on the part of the defendant" to investigate. Pl.'s 6/16/03 Opp'n at 4-5; Pl.'s 10/10/02 Opp'n at 26-29; *Ganem*, 746 F.2d at 852. Consequently, the plaintiff's petition for a writ of mandamus fails to state a cognizable claim. *Hishon*, 467 U.S. at 73.

5. The Court Dismisses the Request for Declaratory Relief

As with the petition for a writ of mandamus, the federal defendants move the court to dismiss the plaintiff's petition for declaratory relief because it fails to state a legally cognizable claim. Fed. Defs.' Renewed Mot. to Dismiss at 3. The Declaratory Judgment Act "does not provide a means whereby previous judgments by state or federal courts may be reexamined, nor is it a substitute for appeal[.]" *Shannon v. Sequeechi*, 365 F.2d 827, 829 (10th Cir. 1966). Therefore, courts "will refuse to entertain a declaratory judgment action where the controversy has been settled by the decision of some other tribunal." *Baier v. Parker*, 523 F. Supp. 288, 290 (M.D. La. 1981) (internal citations omitted).

The plaintiff seeks a declaration by this court that the federal judges' decisions in the plaintiff's previous civil actions are erroneous. Compl at 29. The Declaratory Judgment Act, however, does not permit this court to reexamine the decisions of other tribunals. *Shannon*, 365 F.2d at 829. Thus, the plaintiff's petition for a declaratory judgment fails to state a cognizable claim. *Hishon*, 467 U.S. at 73.

C. The Court Grants the Renewed Motions to Dismiss for Improper Venue Filed By Defendants Pennsylvania, Glenn, and Pittsburgh

1. Legal Standard for a Motion to Dismiss for Improper Venue

Federal Rule of Civil Procedure 12(b)(3) states that the court will dismiss or transfer a case if venue is improper or inconvenient in the plaintiff's chosen forum.[3] In considering a Rule 12(b)(3) motion, the court accepts the plaintiff's well-pled factual allegations regarding venue as true, draws all reasonable inferences from those allegations in the plaintiff's favor, and resolves any factual conflicts in the plaintiff's favor. *2215 Fifth St. Assocs. v. U- Haul Int'l, Inc.*, 148 F. Supp. 2d 50, 54 (D.D.C. 2001). The court, however, need not accept the plaintiff's legal conclusions as true. *Id*.; *Kowal,* 16 F.3d at 1276. In addition, the court may examine facts outside of the complaint to determine whether venue is proper. 5A FED. PRAC. & PROC. CIV. 2d § 1352.

2. Venue in This District Is Improper

Defendants Pennsylvania, Glenn, and Pittsburgh argue that the court should dismiss this action for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3). Pa.'s Renewed Mot. to Dismiss at 5; Glenn's Renewed Mot. to Dismiss at 5; Pitttsburgh's Renewed Mot. to Dismiss at 7. The plaintiff claims that venue is proper in the District of Columbia pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions occurred in this district, the plaintiff resides here and no real property is involved. Compl. at 2; Pl.'s 10/10/02 Opp'n at 10-13, 18-19; Pl.'s Mot. for Hearing at

[3] The federal circuits are split regarding whether the burden in a Rule 12(b)(3) motion is on the defendant or the plaintiff. 5A FED. PRAC. & PROC. CIV. 2d § 1352. The Fourth, Sixth, and Seventh Circuits place the burden on the plaintiff, in keeping with the burden for other jurisdictional issues. *Id.* In contrast, the Third and Eighth Circuits place the burden on the defendant, explaining that venue is a "personal privilege" of the plaintiff. *Id.* The D.C. Circuit has not spoken on this issue. Because the defendant's motion prevails regardless of which party bears the burden, the court need not resolve this issue.

3. The plaintiff also argues that venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions occurred in this district and the federal defendants reside in this district. Pl.'s Mot. for Hearing at 3.

Because 28 U.S.C. § 1391(e)[4] applies only when "a defendant is an officer or employee of the United States or any agency thereof," and because the court has now dismissed all of the claims against the federal defendants, the plaintiff's argument that venue exists here pursuant to 28 U.S.C. § 1391(e) no longer has any basis.[5] 28 U.S.C. § 1391(e). The venue statute that applies to the state and private defendants is 28 U.S.C. § 1391(b). This statute states:

> (b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

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[4] The text of 28 U.S.C. § 1391(e) provides as follows:

> A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

28 U.S.C. § 1391(e).

[5] In fact, the plaintiff's argument would fail even if the United States were still a party because 28 U.S.C. § 1391(e) requires the plaintiff to establish venue for the non-federal defendants as if the federal defendants were not parties to the action. *Id.*; *Boggs v. U.S. Secret Serv.*, 987 F. Supp. 11, 16 (D.D.C. 1997) (stating that for a federal court to hear a case it must have venue over each claim).

28 U.S.C. § 1391(b).

Evaluating the first prong of 28 U.S.C. § 1391(b), the court finds that none of the remaining defendants (the state and private defendants) reside in the District of Columbia. *E.g.* Compl. at 4-5; Pl.'s 8/9/02 Opp'n at 1; Glenn's Renewed Mot. to Dismiss at 2; 28 U.S.C. § 1391(b)(1). As for the second prong, although the complaint includes a statement that a "substantial part of the omissions occurred in DC area," it describes in detail violations of the contracts between the plaintiff and the state and private defendants and litigation in which the defendants allegedly committed fraud, all of which transpired in Pennsylvania. Compl. at 2, 4-31; 28 U.S.C. § 1391(b)(2). The court determines that the plaintiff's unsubstantiated assertion that most of the omissions occurred in this district is a conclusory statement that incorrectly characterizes the facts of the complaint. Compl. at 2; *2215 Fifth St. Assocs.*, 148 F. Supp. 2d at 54; *see also Kowal*, 16 F.3d at 1276. In addition, the complaint demonstrates that a substantial part, if not all, of the events giving rise to the plaintiff's claims occurred in Pennsylvania, not in the District of Columbia, and no relevant property exists in the District of Columbia. *E.g.*, Compl. at 6-25. Finally, because this action could be filed in the Western District of Pennsylvania – indeed that district has already heard and dismissed these same claims – the third prong is not applicable. 28 U.S.C. § 1391(b)(3). Accordingly, venue does not exist in the District of Columbia but does exist in the Western District of Pennsylvania, the "district where a substantial part of the events or omissions giving rise to the claims occurred." 28 U.S.C. § 1391(b)(2).

If venue is improper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a); *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 789 (D.C. Cir. 1983).

The plaintiff, however, does not ask the court to transfer the case to Pennsylvania. Rather, he insists that venue is improper in the Western District of Pennsylvania "due to the 'situation that exist' there[.]" Compl. at 2. The plaintiff explains that finding an impartial judge in the Western District of Pennsylvania "is not possible until 3rd Cir. changed its unlawful policy on counsel representation." *Id*. at 2. Because the plaintiff does not request a transfer of venue, and because he filed his cases here hoping to find a more sympathetic judge, transferring this action to Pennsylvania would not promote the interest of justice. *Naartex Consulting Corp.*, 722 F.2d at 789; *Prof'l Managers' Ass'n v. United States*, 761 F.2d 740, 744 (D.C. Cir. 1985) (discussing Congress' disdain for forum shopping). Accordingly, the court grants the renewed motions to dismiss for improper venue filed by defendants Pennsylvania, Pittsburgh, and Glenn.[6]

D. The Court Grants Defendant Forest Hills's Renewed Motion to Dismiss Because the Statute of Limitations Bars the Claims

1. Legal Standard for Statute of Limitations

A defendant may raise the affirmative defense of statute of limitations via a Rule 12(b)(6) motion when the facts that give rise to the defense are clear from the face of the complaint. *Smith-Haynie v. District of Columbia*, 155 F.3d 575, 578 (D.C. Cir. 1998). Because statute of limitations issues often depend on contested questions of fact, however, the court should hesitate to dismiss a complaint on statute of limitations grounds based solely on the face of the complaint. *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996). Rather, the court should grant a motion to dismiss only if the

[6] Because defendant Forest Hills does not challenge venue, the court must evaluate its renewed motion to dismiss even though the court lacks venue over the claims against defendant Forest Hills. *Buchanan v. Manley*, 145 F.3d 386, 388 (D.C. Cir. 1998) (stating that a district court may not *sua sponte* dismiss claims for lack of venue).

complaint on its face is conclusively time-barred and if "no reasonable person could disagree on the date" on which the cause of action accrued. *Id.*; *Smith v. Brown & Williamson Tobacco Corp.*, 3 F. Supp. 2d 1473, 1475 (D.D.C. 1998) (citing *Kuwait Airways Corp. v. Am. Sec. Bank, N.A.*, 890 F.2d 456, 463 n. 11 (D.C. Cir. 1989)).

Under the District of Columbia statute of limitations, a plaintiff has three years to bring civil rights, contract, conversion and intentional infliction of emotional distress claims. Civil rights claims brought in this court under section 1983 are governed by the District of Columbia's residual statute of limitations, D.C. Code § 12-301(8). *Carney v. Am. Univ.*, 151 F.3d 1090, 1096 (D.C. Cir. 1998) (citing *Owens v. Okure*, 488 U.S. 235, 243-50 (1989)). Accordingly, a plaintiff must bring a section 1983 claim within three years of its accrual. *Id.* In addition, section 12-301(2) and (7) of the D.C. Code apply three-year statutes of limitations to conversion and contract claims, respectively. *A.I. Trade Finance, Inc. v. Petra Int'l Banking Corp.*, 62 F.3d 1454, 1456 (D.C. Cir. 1995). Because section 12-301 does not specify a statute of limitations for intentional infliction of emotional distress, section 12-301(8) applies to such claims. *See Carney*, 151 F.3d at 1096.

2. The Statute of Limitations Bars the Claims Against Defendant Forest Hills

Defendant Forest Hills argues that the three-year statute of limitations, as set forth in D.C. Code § 12-301, bars the plaintiff's civil rights, contract, conversion and intentional infliction of emotional distress claims against it. Forest Hills's Renewed Mot. to Dismiss at 2; Forest Hills's Mot. to Dismiss at 6-7. Defendant Forest Hills argues that all of the plaintiff's allegations against it pertain to actions relating to its 1989 contract with the plaintiff and occurring no later than 1992. Forest Hills's Mot. to Dismiss at 6-7;

see also Compl. 11-14 (setting forth the alleged violations of defendant Forest Hills). Applying section 12-301 as discussed in Part III.D.1, the court determines that a three-year statute of limitations applies to the plaintiff's civil rights, breach of contract, conversion and intentional infliction of emotional distress claims against defendant Forest Hills. D.C. Code § 12-301(2), (7), (8); Compl. at 1, 25-26. Therefore, to comply with these statutes of limitations, the plaintiff had to bring his claims within three years of their accrual. D.C. Code § 12-301(2), (7), (8).

The plaintiff failed to respond to defendant Forest Hills's renewed motion to dismiss, despite the court's order warning the plaintiff that failure to respond to a motion to dismiss "may result in the court granting the motion and dismissing the case."[7] Order dated Aug. 2, 2002 (citing *Fox v. Strickland,* 837 F.2d 507, 509 (D.C. Cir. 1988)). The plaintiff, however, did respond to defendant Forest Hills's original motion to dismiss. Pl.'s 8/9/02 Opp'n. In that response, the plaintiff did not dispute the defendant's contention that the relevant acts all accrued in or before 1992. *Id.* Indeed, the plaintiff's August 11, 1994 complaint in civil action 94-1349, filed in the Western District of Pennsylvania, describes these same acts and thereby demonstrates that the plaintiff was aware of the acts in 1994, if not in 1992. Forest Hills's Mot. to Dismiss Ex. 1. Consequently, the acts accrued no later than 1994 and the statute of limitations expired in 1997, five years before the plaintiff filed his complaint in this action. D.C.

[7] An opposing party must file a responsive memorandum of points and authorities in opposition to a Rule 12 motion within 11 days of the filing of the motion. LCvR 7.1(b). If the opposing party fails to do so, the court may treat the motion as conceded. *Giraldo v. Dep't of Justice*, 202 U.S. App. LEXIS 13685, at *2 (D.C. Cir. July 8, 2002) (citing *Fed. Deposit Ins. Corp. v. Bender*, 127 F.3d 58, 68 (D.C. Cir. 1997)); *Twelve John Does v. District of Columbia*, 117 F.3d 571, 577 (D.C. Cir. 1997). Accordingly, even if the court did not grant the motion to dismiss pursuant to the statute of limitations argument, the court could grant the renewed motion to dismiss as conceded.

Code § 12-301(2), (7), (8); *Smith*, 3 F. Supp. 2d at 1475.

The plaintiff asserts an equitable tolling argument, stating that the court should toll the statute of limitations because he has previously filed identical claims and this action is merely a "follow-on case". A plaintiff, however, may invoke equitable tolling only when a defendant is found to have committed fraudulent concealment, hiding from the plaintiff the basis of a cause of action. *Hohri v. United States*, 782 F.2d 227, 246 (D.C. Cir. 1986), *vacated and remanded on other grounds*, 482 U.S. 64 (1987). In arguing that he previously filed identical claims regarding the actions, he demonstrates that he was aware of the actions in 1994, the year in which he filed his most recent previous action regarding these claims. Compl. at 15; Forest Hills's Mot. to Dismiss Ex. 1. Because the plaintiff neither argues nor demonstrates that the defendant fraudulently concealed the basis of his cause of action, his equitable tolling argument fails. *Hohri*, 782 F.2d at 246.

In sum, because "no reasonable person could disagree" that the plaintiff's claims accrued no later than 1994, and the plaintiff filed the instant complaint in 2002, the three-year statute of limitations bars the plaintiff's claims against defendant Forest Hills. *Firestone*, 76 F.3d at 1209. The court therefore grants defendant Forest Hills's motion to dismiss.

IV. CONCLUSION

For all these reasons, the court denies the federal defendants' motion to strike and grants all of the defendants' renewed motions to dismiss. An order directing the parties in a manner consistent with this Memorandum Opinion is separately and contemporaneously issued this _____ day of August, 2003.

_____
Ricardo M. Urbina
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M.R. MIKKILINENI,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: 02-1205 (RMU)
v.	:	
	:	Document Nos.: 23, 27, 28, 33, 34, 45,
COMMONWEALTH OF	:	48, 50
PENNSYLVANIA *et al.*,	:	
	:	
Defendants.	:	

ORDER

DENYING THE FEDERAL DEFENDANTS' MOTION TO STRIKE;
GRANTING THE DEFENDANTS' RENEWED MOTIONS TO DISMISS

For the reasons stated in this court's Memorandum Opinion separately and contemporaneously issued this _____ day of August, 2003, it is

ORDERED that the federal defendants' motion [27] to strike is **DENIED**; and it is

FURTHER ORDERED that the federal defendants' renewed motion [50] to dismiss is **GRANTED**; and it is

ORDERED that the plaintiff's motion [34] for a hearing is **DENIED**; and it is

FURTHER ORDERED that defendant Pennsylvania's renewed motion [48] to dismiss is **GRANTED**; and it is

ORDERED that defendant Forest Hills's renewed motion [24] to dismiss is **GRANTED**; and it is

FURTHER ORDERED that defendant Pittsburgh's renewed motion [28] to dismiss is **GRANTED**; and it is

ORDERED that defendant Glenn's renewed motion [33] to dismiss is **GRANTED**.

SO ORDERED.

_____

Ricardo M. Urbina
United States District Judge

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Civil Action No. 02-1205 (RMU)

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